UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.2/1993/5
30 April 1993

ENGLISH
Original: ENGLISH/FRENCH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Contemporary
Forms of Slavery
Eighteenth Session
17-28 May 1993
Item 5 (e) of the provisional agenda

REVIEW OF DEVELOPMENTS IN OTHER FIELDS OF CONTEMPORARY FORMS SLAVERY: EXPLOITATION AND TRAFFIC IN ALL ITS FORMS AFFECTING CHILDREN, INCLUDING THE PHENOMENON OF CHILD SOLDIERS, ILLEGAL TRAFFIC FOR THE PURPOSES OF ADOPTION AND ORGAN TRANSPLANTS

Report of the Secretary-General prepared pursuant to paragraph 7 of Sub-Commission resolution 1992/2

GE.93-13420 (E)

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Introduction

In its resolution 1992/2, paragraph 7, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to invite all Governments, United Nations bodies, including the United Nations Children's Fund, the specialized agencies, in particular the World Health Organization, the International Criminal Police Organization (INTERPOL) and all relevant non-governmental organizations, to pursue their investigations of allegations involving the removal of organs from children and to indicate the measures taken, if any, to counteract this practice wherever it exists, with a view to presenting a report to the Working Group at its eighteenth session.

Consequently, the Secretary-General sent, on 3 November 1992, note verbales and letters to the above-mentioned Governments, United Nations bodies and organizations.

I. GOVERNMENTS

EGYPT

[Original: Arabic]
[26 January 1993]

The Government of Egypt, referring to article 285 of its Penal Code, asserted that anyone who subjects a children under seven years of age to danger or who abandons such a child at an unfrequented location, or incites others to do so, shall be punished by a term of up to two years' imprisonment. If such endangering or abandonment leads to the removal of one of the child's organs or the loss of a faculty, the person responsible shall be liable to the penalties prescribed for deliberate injury and, in the event of the child's death as a result thereof, shall be liable to the penalty prescribed for murder.

ESTONIA

[Original: English]
[15 February 1993]

The Republic of Estonia, in reference to paragraph 7, stated that it bases its legislation on article 36 of the Convention on the Rights of the Child. There are no statistics on file in Estonia which detail any case involving the removal of organs from children. Bodily injury is defined as a criminal offence under articles 107, 108, 112, 113 and 114 of the Republic of Estonia Criminal Code.

GERMANY

[Original: English]
[19 March 1993]

Germany stated that there are no specific bilateral or multilateral arrangements between itself and other countries concerning judicial assistance in the prosecution of the sale of children in relation to organ transplantation. Transborder prosecution of this crime is based on general agreements providing for mutual judicial assistance or informal cooperation.

At present there is no specific law in Germany covering transplantation. Nor does criminal law refer <u>expressis verbis</u> to the sale of children in relation to organ transplantation. Where, however, children are used as living "spare parts depots" for such purposes protection is afforded by the general provisions of criminal law (homicide, murder, bodily injury, etc.).

Germany intends, however, to introduce a bill in the near future which will specifically ban the obnoxious practice of selling human organs and render it punishable under criminal law.

IRELAND

[Original: English]
[10 December 1992]

Ireland, in response to paragraph 7, stated that the practice referred to does not occur in Ireland.

JAPAN

[Original: English]
[23 March 1993]

There has been no instance in Japan where the sale, kidnapping or trafficking of children for the purpose of transplanting of their organs was actually committed. If such a case should occur, it is to be punished by the following punitive provisions of law, which provide adequate safeguards:

(a) Penal Code, article 204 (bodily injury; imprisonment at forced labour for not more than 10 years or a fine of not more than 500,000 yen or a minor fine); article 224 (kidnapping or abduction; imprisonment at forced labour for not less than three months nor more than five years); article 225 (kidnapping or abduction for profit; imprisonment at forced labour for not less than one year nor more than 10 years); article 226 (kidnapping or abduction for transportation to foreign country and traffic in persons; imprisonment at forced labour for a limited term of not less than two years); article 227, paragraph 1 (assistance in kidnapping or abduction; imprisonment at forced labour for not less than three months nor more than five years); article 227, paragraph 3 (receiving a kidnapped or abducted person; imprisonment at forced labour for not less than six months nor more than seven years);

(b) Child Welfare Law, article 34, paragraph 1, item (7) and article 60, paragraph 2 (acts transferring the custody of a child under 18 years of age to a person who is liable to commit an act violating punitive laws; imprisonment at forced labour for not more than one year or a fine of not more than 300,000 yen).

JORDAN

[Original: English]
[5 February 1993]

The Government of Jordan stated that the removal of children's organs is a phenomenon which does not exist in Jordan.

PHILIPPINES

[Original: English]
[23 March 1993]

Concerning paragraph 7, the Government of the Philippines stated that, while the common and familiar forms of child abuse were duly noted within the country, fortunately no such incident involving the removal of organs from children has ever occurred. This rare and alarming allegation, none the less, is already duly sanctioned under existing legislation. Article 262 of the Revised Penal Code of the Philippines readily provides, viz:

> "Article 262 Mutilation. The penalty of reclusión temporal to reclusión perpetua shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially of some essential organ of reproduction."

Any other intentional mutilation shall be punished by prisión mayor in its medium and maximum periods.

Republic Act No. 7610 of the Congress of the Philippines, in article IV, section 7, states that:

> "Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusión temporal to reclusión perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age."

SAUDI ARABIA

[Original: English]
[15 November 1992]

The Government of Saudi Arabia stated that, with regard to paragraph 7, the content of the inquiry has been brought to the attention of the competent authorities, and that there are no violations concerning this problem. This matter is covered in Saudi Arabia by the divine Islamic Law.

SOUTH AFRICA

[Original: English]
[26 March 1993]

The Department of National Health and Population Development of South Africa sent the following information:

"In terms of the Human Tissue (Act No. 65 of 1983) -

1. Any person who is competent to make a will (16 years of age or older) may in his will, or in a document signed by him and at least two competent witnesses, or in an oral statement made in the

presence of at least two competent witnesses donate his body or any specific tissue thereof to be used after his death for medical or dental training, research, the advancement of medicine or dentistry, or therapy.

2. No tissue or gametes may be removed from the body of a living person who is a minor (under 21 years of age) without the consent of the parents or guardians of that person.

3. In the case of the removal of tissue which is replaceable by natural processes, or the withdrawal of blood, from the body of a person who is a competent witness (14 years of age or older), the consent of that person to the removal of that tissue or blood shall be sufficient, whether it be granted in writing or orally."

SUDAN

[Original: English]
[28 January 1993]

With regard to the issue of the removal of organs from children, the Sudanese Ministry of Justice and Attorney-General's Chambers contacted the relevant departments within the different ministries, particularly the Criminal Investigation Department, Ministry of the Interior, and according to the statistics of crimes reported during the last years available not a single case concerning the removal of organs from children or adults was reported. The Sudanese Government states that the idea itself is absolutely unknown and shocking to Sudanese society. Criminal statistics in the Sudan do not show a single case of the removal of organs from children and obviously no measures could be taken to prevent crimes that do not exist.

YUGOSLAVIA

[Original: English]
[11 March 1993]

The Permanent Mission of the Federal Republic of Yugoslavia, with regard to paragraph 7, asserted that removal of organs from children is regulated by the Federal Law on the Conditions of Removal and Transplantation of Organs (Official Gazette of the Social Federal Republic of Yugoslavia, No. 63/90). This law provides that minors can be donors only exceptionally of bone marrow and only with the consent of their parents. According to available information, there have been no infractions of this law.

II. UNITED NATIONS BODIES

United Nations Population Fund

[Original: English]
[30 November 1992]

The United Nations Population Fund states that it has no relevant information at this time to be brought to the attention of the Working Group on Contemporary Forms of Slavery.

Economic and Social Commission for Asia and the Pacific

[Original: English]
[24 November 1992]

The Economic and Social Commission for Asia and the Pacific has no information to report concerning the investigations of allegations involving the removal of organs from children and measures taken to counteract this practice wherever it exists.

Economic Commission for Latin America and the Caribbean

[Original: English]
[12 February 1993]

With regard to the request of the Sub-Commission for the Prevention of Discrimination and Protection of Minorities for information concerning the removal of organs from children, the Economic Commission for Latin America and the Caribbean stated that for the time being ECLAC does not sponsor any activities in this area, as they are not part of the work programme of the Commission.

III. SPECIALIZED AGENCIES

International Labour Office

[Original: English]
[12 February 1993]

The International Labour Office has no information to furnish on the question concerning allegations involving the removal of organs from children.

IV. INTERGOVERNMENTAL ORGANIZATIONS

Interpol

[Original: English]
[6 January 1993]

In response to the inquiry of the Secretary-General, Interpol sent the following circular to its National Central Bureaux. The replies received to this letter indicated that no concrete information was available to substantiate the allegations made in the press. The subject of trafficking in human organs had been proposed by Italy as an agenda item for the Interpol European Regional Conference held in Bern, from 31 March to 2 April 1993.

"During the past few years the press in a number of countries have suggested that children are being adopted in certain developing countries, the sole purpose being to use their organs in transplant surgery. This subject has been also mentioned at various conferences hosted by the United Nations and attended by representatives of the General Secretariat and by non-governmental organizations specializing in the welfare of children. Until quite recently no concrete evidence or specific cases has come to the attention of the General Secretariat.

"At the request of the NCB of Brazil, the General Secretariat has been asked to draw this matter to the attention of member countries and, in particular, to request that the topic be included in the work programme and also be considered by the General Assembly.

"The General Crime Group of the General Secretariat, which is currently involved in a programme relating to offences committed against children, specifically asks that member countries be requested to supply any information they may possess on this subject to the General Secretariat to enable consideration to be given as to what action the international police community should be recommended to take to combat this activity. It has been suggested that in the case of an international adoption, the adoptive parents be monitored by the social welfare and judicial authorities upon their return home.

"It is appreciated that this subject is one which not only involves the police but also welfare, medical, immigration and judicial authorities. Prior to making formal contact with these other bodies, NCBs are requested to reply to this inquiry as soon as possible and treat the matter as one of urgency."

Organization of American States

[Original: English]
[11 December 1992]

In response to paragraph 7, the Organization of American States referred to the Annual Report of the Inter-American Commission for Human Rights for 1991 (OEA/Ser.L/V/II.81/Rev.1/Doc 6/14 February 1992, at pp. 305-321). The recommendations of the Commission for the strengthening of this area of human rights refer to the kidnapping of children for the purpose of involuntary organ transplants as one of many reasons why the protection of the rights of children must be enhanced.

V. NON-GOVERNMENTAL ORGANIZATIONS

Category I

International Council of Women

[Original: English]
[23 November 1992]

The International Council of Women informed the Sub-Commission that at its forthcoming meeting of its Executive Committee, one session will include the subject of "Prostitution and Traffic of Women and Children".

They further state that at its last Plenary Conference, held at Bangkok in September 1991, the following resolution (No. 16) was adopted:

Trafficking in human organs

"Aware that commercial trafficking in human organs for transplant is becoming prevalent throughout the world and is without benefit of either medical or moral control;

"Concerned that such practices exploit those most vulnerable including children and endanger the future health of donors;

"Aware that the Forty-Second World Health Assembly adopted a resolution on the prevention of the purchase and sale of human organs;

"The International Council of Women

"Calls upon National Councils:

"1. To study the question of the purchase and sale of human organs in their own countries and where appropriate to urge their respective governments to set up ethical committees to promulgate and enforce legislation prohibiting the commercial trafficking in human organs for transplant;

"2. To urge their respective governments to report to the World Health Organization of action taken with respect to this resolution."

Category II

Coalition against the Trafficking in Women

[Original: English]
[8 February 1993]

The Coalition against the Trafficking in Women, in response to paragraph 7, submitted a report on allegations of organ trafficking prepared by Janice G. Raymond, Ph.D. Because of its length, only the final part of that document is reproduced below. The full text can be obtained upon request.

Recommendations

An appropriate United Nations body, such as UNESCO's Division of Human Rights and Peace, should convene a working group on the allegations of child organ trafficking. This group should include not only those with medical and ethical training but those who have actively researched these allegations over the years, such as journalists, academics and human rights activists.

The foremost measure needed to counteract this gross violation of human rights is legislation similar to that proposed by the World Medical Association in 1985 banning child organ trading in all countries. Perhaps this prohibition could be best specified within the context of proscribing other medical and scientific human rights violations directed to the international transport of human organs and tissues. International guidelines and proscriptions bearing on the human rights aspects of transactions in body parts are urgently needed.

Some United Nations commission or subgroup, perhaps the Working Group on Contemporary Forms of Slavery, needs to monitor these guidelines and legislation. The World Health Organization should also be called upon to support such guidelines/legislation and the monitoring of organ trafficking.

Countries should be called upon to keep strict records of organ transplants, indicating the number of completed organ transplants, the number of organs available, where they come from and how they are procured. Any private hospitals or clinics performing transplants should also be required to keep these records, and those records should be scrutinized by a panel of experts to see if supply corresponds with demand; if not, are organs procured from other-than-regular channels, and if so, from where?

International adoptions must be scrutinized carefully to ensure that no irregularities are present which indicate that children have been involuntarily taken from women, or that adoption and immigration papers have been altered or falsified.

Where children are disabled, particular care should be taken to certify that such children arrive in the country of destination and continue to live in a safe and secure environment.

International Association of Lions Clubs, The

[Original: English]
[23 December 1992]

The International Association of Lions Clubs informed the Sub-Commission, with regard to paragraph 7, that they have referred the inquiry to their liaison offices to the United Nations and to the World Health Organization.

Salvation Army, The

[Original: English]
[26 January 1993]

The Salvation Army, in response to paragraph 7, stated that although many of their headquarters are aware of the problem, none of the correspondents could point to any direct confrontation with this malign practice. They also stated that they have further information from the International Abolitionist Federation but none from specific Salvation Army sources.

World Movement of Mothers

[Original: English]
[8 February 1993]

In response to paragraph 7, the World Movement of Mothers stated that it is categorically opposed to any injury - physical as well as moral - to any child in the world. The World Movement of Mothers is also holding a workshop on "Human being slavery" which will gather non-governmental organizations and will issue recommendations to the Permanent Committee.